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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/574,836	08/09/2006	Alain Behar	Q94335	5015
23373 7590 09/30/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
WOOD, JONATHAN K				
ART UNIT		PAPER NUMBER		
3754				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/574,836

Applicant(s)

BEHAR ET AL.

Examiner

JONATHAN WOOD

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10, 11 and 13-20 is/are rejected.
- 7) ☒ Claim(s) 9 and 12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 April 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Specification

1. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

2. The disclosure is objected to because of the following informalities: the abstract includes legal phraseology. Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4-6, 13 and 16-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,765,601 to *Wells et al.* (*Wells*).

Wells shows a fluid dispenser head for mounting on an actuator rod (21) of a dispenser member (12) that is displaceable down and up along an axis (col. 7, ll. 26-32)

comprising a substantially rigid inner core (34) having an axial connection sleeve (46) for engaging on the actuator rod (col. 8, ll. 64-67) and defining an inlet duct (39), a substantially flexible (col. 7, ll. 33-34) dispenser endpiece (19) into which the core is axially engaged and defining an endpiece channel (inside channel of 19 until it meets 38), a dispenser orifice (58) at a downstream end of the endpiece channel, a connection channel (38) defined by the core connecting the inlet duct and endpiece channel, a bearing surface (36) on which axial pressure (37) can be exerted, and a base skirt (42 to 41) that extends around the connection sleeve and in which the endpiece is inscribed, wherein the endpiece extends substantially parallel to and offset from the axis (Figure 4), and wherein the bearing surface extends axially downstream from the connection sleeve and intersects the axis (Figure 4).

Regarding claim 6, *Wells* shows the core forming a part of the bottom portion of the endpiece channel (at shoulder adjacent 40).

Regarding claim 13, *Wells* shows the core forms a collar (44) that is engaged in a base skirt (45) formed by the casing.

Regarding claim 16, *Wells* shows the bearing surface slopes, forming an angle between 40° and 90° relative to the axis (Figure 4).

Regarding claim 20, *Wells* shows a shape of an inner surface of the casing corresponds with a shape of the outer surface of the core (Figure 4, where 19 engages 44).

5. Claims 1, 2, 4-8, 10, 11, 13, 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by US PG PUB No. 2003/0071085 to *Lasserre et al.* (*Lass*).

Lass shows a fluid dispenser head for mounting on an actuator rod (12) of a dispenser member (2) that is displaceable down and up along an axis (¶ 49, ll. 9-10) comprising a substantially rigid inner core (20) having an axial connection sleeve (22) for engaging on the actuator rod (¶ 51, ll. 2-4) and defining an inlet duct (23), a substantially flexible dispenser endpiece (40) into which the core is axially engaged and defining an endpiece channel (area between top line and top of 40 in Figure 3B below, as annotated by examiner), a dispenser orifice (48) at a downstream end of the endpiece channel, a connection channel (area between lines in Figure 3B below, as annotated by examiner) defined by the core connecting the inlet duct and endpiece channel, a bearing surface (47 to 46) on which axial pressure can be exerted, and a base skirt (15) that extends around the connection sleeve and in which the endpiece is inscribed, wherein the endpiece extends substantially parallel to and offset from the axis (Figure 3B), and wherein the bearing surface extends axially downstream from the connection sleeve and intersects the axis (Figure 3B).

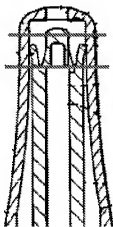


Figure 3B of *Lass*, as annotated by examiner

Regarding claim 6, *Lass* shows the core forming a part of the bottom portion of the endpiece channel (at 35, see Figure 3B above, as annotated by examiner).

Regarding claim 7, *Lass* shows the casing defines the bearing surface (Figure 3B).

Regarding claim 8, *Lass* shows the core forms an axial spout (21 to 35) that is engaged in the endpiece (Figure 3B), a bottom portion of the endpiece channel being formed between the casing and the spout (Figure 3B above, as annotated by examiner).

Regarding claim 10, *Lass* shows the spout includes an end (35) that terminates in a position set back from the dispenser orifice (Figure 3B), a top portion of the endpiece channel being formed solely by the casing downstream from the spout, (Figure 3B above, as annotated by examiner), the dispenser orifice being formed in the top portion (Figure 3B).

Regarding claim 11, *Lass* shows the core forms a bearing plate (34) into which the duct opens out axially (Figure 3B), the connection channel being formed between the plate and the casing (Figure 3B above, as annotated by examiner).

Regarding claim 13, *Lass* shows the core forms a collar (26) that is engaged in a base skirt (45) formed by the casing.

Regarding claim 20, *Lass* shows a shape of an inner surface of the casing corresponds with a shape of the outer surface of the core (Figure 3B).

6. Claims 1, 2, 14 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 4,775,081 to *Morane* (*Morane*).

Morane shows a fluid dispenser head for mounting on an actuator rod (2) of a dispenser member (1) that is displaceable down and up along an axis (col. 3, ll. 53-55) comprising an axial connection sleeve (skirt below 11b in Figure 1) for engaging on the actuator rod and defining an inlet duct (11b), a dispenser endpiece (40) defining an endpiece channel (11a), a dispenser orifice at a downstream end of the endpiece channel (Figure 1), a connection channel (middle portion of 11) connecting the inlet duct and endpiece channel, a bearing surface (9) on which axial pressure (F, Figure 3) can be exerted, and a base skirt (5) that extends around the connection sleeve and in which the endpiece is inscribed, wherein the endpiece extends substantially parallel to and offset from the axis (Figure 3), and wherein the bearing surface extends axially downstream from the connection sleeve and intersects the axis (Figure 1).

Regarding claim 14, *Morane* shows the dispenser endpiece having a flat spatula shape (Figure 3).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

10. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Wells*.

Wells shows all aspects of applicant's invention as set forth in claim 2, but does not disclose that the endpiece is axially tangential to the skirt. It would have been obvious to one having ordinary skill in the art at the time of the invention to have relocated the endpiece and spout (44) of *Wells* to a location tangential to the skirt, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japiske*, 86 USPQ 70.

11. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Morane* in view of US Patent No. 3,428,223 to *Lewiecki et al. (Lew)*.

Morane shows all aspects of applicant's invention as set forth in claim 1, but does not disclose the dispenser orifice being formed by a self-sealing flexible slot.

However, *Lew* shows an aerosol dispenser head (10) in which the dispenser orifice (20) is formed by a self-sealing flexible slot (24 with 28, col. 2, ll. 46-51). It would have been obvious to one having ordinary skill in the art at the time of the invention to have, under the teachings of *Lew*, to have provided the dispenser head of *Morane* with a dispenser orifice having a self-sealing flexible slot in order to seal off the discharge channels subsequent to use and thereby prevent clogging of such passages (*Lew*, col. 1, ll. 43-46).

Allowable Subject Matter

12. Claims 9 and 12 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

13. Applicant's arguments, see pages 9-12, filed 5/19/2009, with respect to the rejection(s) of claim(s) 1-17 under 35 U.S.C. 103(a) have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection has been made above. Due to the persuasive arguments presented by applicant, this rejection is non-final.

Conclusion

14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US Patent No. 6,202,899 B1 to *Lasserre et al.* discloses a two piece dispenser head, similar to applicant's claim 1.
- US Patent No. 7,097,078 B2 to *Sanchez* discloses a device similar to that of *Morane* and therefore similar to applicant's claim 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754